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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/606,561

06/26/2003

Donald E. Weder

8403.929

4721

30589

7590

09/26/2006

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OKLAHOMA CITY, OK 73113

EXAMINER

PALO, FRANCIS T

ART UNIT

PAPER NUMBER

3644

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/606,561	Applicant(s) WEDER, DONALD E.	
	Examiner Francis T. Palo	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-21 and 29-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-21 and 29-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/11/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

In response to the 6/26/03 application filing, having a **priority claim** back to application 09/103,050 filed on 06/22/1998 (priority line of patents #1), the examiner rejected claims 1-40 by relying upon two of applicant's previous patents [Weder (US 4,279,811) **1981** in view of Weder (**5,572,851**) **1996**]; applicant responded by submitting a new compounded priority statement claiming priority back to the '**851** modifying reference (priority line of patents #2) relied upon in the non-final office action, and further cited priority to an additional line of patents (priority line of patents #3) wherein the instant application filing date (6/26/03) is earlier than the preceding parent application filing date (9/17/03), it is unclear how the instant application can claim priority to an application (now patent 7,021,000) that was filed three months after the instant application was filed; the examiner requests clarification and-or correction.

Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

The replacement reference filed 4/13/05 for consideration under 37 CFR 1.78(a)(2) must be submitted during the pendency of the application, and within the later of four months from the actual filing date of the application, or sixteen months from the filing date of the prior application; neither condition has been met, the failure to timely submit the replacement priority claim required by 35 U.S.C. 120 is considered a waiver of any benefit under 35 U.S.C. 120 to the prior applications cited in replacement paragraph [0001] of the instant application.

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If applicant desires the benefit under 35 U.S.C. 120 based upon a previously filed application, **applicant must file a petition** for an unintentionally delayed benefit claim under 37 CFR 1.78(a)(3) or (a)(6). The petition must be accompanied by: (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted); (2) a surcharge under 37 CFR 1.17(t); and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional.

The Director may require additional information where there is a question whether the delay was unintentional.

The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Election/Restrictions

Applicant's election without traverse of claims 10-21 and 29-40 in the reply filed on 7/06/06 is acknowledged.

In consideration of the previous priority discussion above, the earlier effective filing date of abandoned application 09/103,050 of 6/22/98 is maintained.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-21 and 29-40 are rejected under 35 U.S.C. 103(a),
as being unpatentable over Weder (US 4,279,811) 1981,
in view of Weder (5,572,851) 1996.

Regarding **independent claim-10**:

Weder '811 discloses in the Abstract, a sheet material constructed of metallic foil laminated to a thin plastic film or sheet of polypropylene or the like, used as a flower pot wrap (item, as claimed); Weder does not specifically disclose metal foil laminated to metallized film, as cited in the instant claim.

Weder '851 teaches; "a material (56) having an upper and lower surface and an outer periphery, that is capable of being wrapped about a pot (30) or a floral grouping (46), and formed into a plant package (10)", (column-7, beginning at line-22).

Weder continues with material preferences, specifically; metal foil, non-polymer film, or laminations or combinations thereof.

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Weder '851 teaches therefore, a laminated material comprising metallic foil and non-polymer film; the Examiner further reads non-polymer film as encompassing metallized film, which would render a reading of a laminated material comprising metallic foil and metallized film, as cited in the instant claim.

Weder '811 in view of Weder '851, therefore renders obvious the laminate of the instant independent claim.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have substituted metallized film as taught by Weder '851, for the plastic film or sheet of polypropylene of Weder '811, as further such modification is merely an alternate equivalent non-polymeric film material performing the same intended function of providing aesthetic appeal, and reinforcement to the metal foil layer.

In conclusion, Weder '811 in view of Weder '851 renders obvious a laminated material comprising a layer of metal foil and a layer of metallized film; said material is further readable as an "ultra bright material" (which would be an inherency of the metal foil and film), as cited.

Furthermore, the reflectivity of the metallized film, as cited in the instant claim would be inherent to the metal film, (Weder '811 discloses aluminum foil as metallic foil; column-2, beginning at line-40).

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Regarding **independent method claim-29**:

The discussion above regarding independent claim-10 is relied upon.

The method of wrapping an item (of independent claim-10) as cited in the instant claim, is disclosed in the abstract of Weder '811.

Regarding **repeating claims 11 and 30**:

The discussions above regarding the independent claims are relied upon.

A bonding material is inherent to the laminated material of the independent claims.

Regarding **repeating claims 12 and 31**:

The discussions above regarding the independent claims are relied upon.

A bonding material is inherent to the laminated material of the independent claims, and an adhesive bonding material would also be encompassed by the inherent bonding material of the laminate of the independent claims.

Regarding **repeating claims 13 and 32**:

The discussions above regarding the independent claims are relied upon.

A bonding material is inherent to the laminated material of the independent claims, and a cohesive bonding material would also be encompassed by the inherent bonding material of the laminate of the independent claims.

Regarding **repeating claims 14 and 33**:

The discussions above regarding the independent claims are relied upon.

Weder '811 discloses the application of a single color of ink or other printing medium, and metallic materials would read on metallic finishes as cited in the instant claims.

Regarding **repeating claims 15 and 34**:

The discussions above regarding the independent claims are relied upon.

Weder '811 discloses the laminate construction as having the thickness usually employed as a wrapping material, so that it is easily flexible but yet will to some degree, retain its own shape after being deformed, (column-2, beginning at line 40); the disclosure is therefore readable on the thickness range cited in the instant claims.

Regarding **repeating claims 16 and 35**:

The discussions above regarding the independent claims are relied upon.

Weder '811 discloses the laminate construction as having the thickness usually employed as a wrapping material, so that it is easily flexible but yet will to some degree, retain its own shape after being deformed, (column-2, beginning at line 40); the disclosure is therefore readable on the thickness range cited in the instant claims.

Regarding repeating **claims 17 and 36**:

The discussions above regarding independent claims 10 and 29 are relied upon.

Weder '811 discloses the printing of metallic foil for use as a decorative wrap for flower pots and the like, (Background Of The Invention); said disclosure is readable on a floral wrapper as cited in the instant claims.

Regarding repeating **claims 18 and 37**:

The discussions above regarding independent claims 10 and 29 are relied upon.

Weder '811 discloses the printing of metallic foil for use as a decorative wrap for flower pots and the like, (Background Of The Invention); said disclosure is readable on a pot wrapper as cited in the instant claims.

Regarding repeating **claims 19 and 38**:

The discussions above regarding independent claims 10 and 29 are relied upon.

Weder '811 discloses the printing of metallic foil for use as a decorative wrap for flower pots and the like, (Background Of The Invention); said disclosure is readable on a preformed flower pot cover as cited in the instant claims.

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Regarding repeating **claims 20 and 39**:

The discussions above regarding independent claims 10 and 29 are relied upon.

Weder '811 discloses the printing of metallic foil for use as a decorative wrap for flower pots and the like, (Background Of The Invention); said disclosure is readable on a floral sleeve wrapper as cited in the instant claims.

Regarding repeating **claims 21 and 40**:

The discussions above regarding independent claims 10 and 29 are relied upon.

Weder '811 discloses the printing of metallic foil for use as a decorative wrap for flower pots and the like, (Background Of The Invention); said disclosure is readable on a decorative pot cover as cited in the instant claims.

Weder '811 is silent as to a removable sleeve portion as cited in the instant claim.

Weder '851 teaches a removable sleeve portion as cited in the instant claims.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Weder '811 to include a removable sleeve portion as cited and as taught by Weder '851, for the well-known aesthetic advantages of that feature.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

As an alternate to the use of Weder '851, Renner '559 could be relied upon for the teaching of films of metallic substances in addition to foils, and Renner further teaches films of organic plastics materials may be coated or laminated with metallic films; Renner can also be relied upon for the teaching of a molded cover for containers, said covering being formed of a plurality of flat sheets of material(s).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 571-272-6907. The examiner can normally be reached on M-Tu.,Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Francis T. Palo

Francis T. Palo
Primary Examiner
Art Unit 3644